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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:	)	
	)	
Review of the Commission's Regulations	)	
Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations	)	
Review of Policy and Rules	)	MM Docket No. 87-7

Comments of

SUNBELT COMMUNICATIONS COMPANY

In response to

Second Further Notice of Proposed Rulemaking

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Its attorney

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Table of Contents

SUMMARY

These comments are addressed solely to the question of the proposed use of the Designated Market Area (DMA) as well as the Grade A contour in the Commission's local ownership rule, the duopoly rule. Sunbelt Communications Company (Sunbelt) opposes the use of DMAs as a standard in applying the Commission's duopoly rule, and urges the Commission to return to its original proposal to adopt the Grade A contour alone as the standard for its local ownership rule. As the Commission previously noted in its original proposal of the Grade A contour criteria, a change to the Grade A contour "would narrow the geographic area in which common ownership of television stations would trigger [Commission] rules to an area that *more accurately reflects a station's core market.*" Review of the Commission's Regulations Governing Television Broadcasting, 10 FCC Rcd 3524, 3575 (1994) (emphasis added).

One problem with DMA's as defined by Nielsen is that they are subject to change at the discretion of Nielsen. Specifically, lack of governmental oversight allows economic-based, arbitrary manipulation of the criteria in the creation and modification of DMA's. As a result, a duopoly rule based on DMA's will provide inconsistent results.

Also, by adopting the proposed DMA criteria and grandfathering existing common ownership arrangements within the same DMA, new entrants are denied the advantages enjoyed by existing broadcasters. This creates a disincentive to the entrance of new voices in the marketplace.

A third drawback of the DMA criteria is that DMA's vary widely by geographic size and population. Thus, use of the DMA would create unfair hardship in the several markets where DMA's are large, and result in non-uniform and haphazard application of the duopoly rule.

Accordingly, use of the DMA criteria is inconsistent with the goal of promoting "greater certainty by adopting generally applicable rules." Second Further Notice of Proposed Rule Making, MM Docket Nos. 91-221 and 87-8; FCC 96-438 at ¶7.

Fourth, use of the DMA criteria will produce anticompetitive results by hampering new entrants, including new networks. Existing dominant stations have saturated many DMA's through the use of large numbers of translators which provide economies of scale to these licensees, but because of DTV will simply be unavailable to new entrants. Thus, a new entrant's ability to compete with these dominant stations may depend upon acquiring more than one station in a large DMA, which the proposed DMA / Grade A rule would prohibit.

Finally, the DMA definition of a market utterly fails to accurately define local markets in geographically large DMA's, yet the Commission seeks to promote viewpoint diversity and encourage competition in programming and advertising in each of the specific local markets. In order to protect this important public interest the Commission must ensure accurate and appropriate local market definition. It is a simple fact that viewers and advertisers in cities which are distant but included within the same DMA are not truly in the same "local market." The needs and preferences of individual communities vary greatly from town to town and city to city, and this variance should be reflected in varied "local" programming. Similarly, advertisers within distant communities of a single DMA are most concerned with reaching local viewers and thus focus on local demographics, local buying preferences and local time availability, while desiring local advertising rates.

For these reasons Sunbelt urges the use of the Grade A contour alone, as the Commission originally proposed, in applying the Commission's duopoly rule.

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COMMENTS OF SUNBELT COMMUNICATIONS COMPANY

Sunbelt Communications Company ("Sunbelt")[1] respectfully submits the following comments in response to the Commission's Second Further Notice of Proposed Rule Making, MM Docket Nos. 91-221 and 87-8; FCC 96-438, ("Second Further Notice").

INTRODUCTION

In its Second Further Notice the Commission proposes to adopt a new television local ownership standard permitting a single entity to own more than one television station where the Grade A contours of the stations do not overlap and where the stations are not in the same Designated Market Area ("DMA"). With respect to the proposed rule, the Commission seeks comment on whether the DMA classification developed by A.C. Nielsen Company "provides a

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[1]Sunbelt is the parent company of the licensees of KVBC (TV), Las Vegas, KRNV (TV) and KRNV-FM, Reno, Nevada; KYMA (TV), Yuma, Arizona/El Centro, California; KPVI (TV), Pocatello and KXTF (TV), Twin Falls, Idaho; and KJWY (TV), Jackson, Wyoming. Sunbelt is also the permittee for KWNV (TV), Winnemucca, Nevada and the parent company of the permitee for KENV (TV), Elko, Nevada.

reasonable, general approximation of a television station's geographic market, and whether the DMA is an appropriate basis for application of [FCC] local ownership rules." Second Further Notice at ¶19.[2] These comments are submitted in response to this request by the Commission to explain why a DMA is not a reasonable, general approximation of a station's local market, and is not an appropriate basis for the duopoly rule.

BACKGROUND

The Commission's current rule, found at 47 CFR §73.3555(b), prevents a party from owning two television stations within certain geographic proximity of each other. Specifically, no common ownership is allowed if two stations' Grade B signal contours overlap. Grade B signal contours have a radius of approximately 50-70 miles. Second Further Notice at ¶10.

However, on February 8, 1996, the Telecommunications Act of 1996 (the "Act"), Pub. L. No. 104-104, 110 Stat. 56 (1996) was passed into law. Section 202 of the Act directs the Commission to revisit the duopoly rule and consider whether it should be retained, modified or eliminated. Although the Commission's initial considerations favored moving to a Grade A signal contour approach when applying the Duopoly rule, Review of the Commission's Regulations Governing Television Broadcasting, 10 FCC Rcd 3524, 3574-3575 (1994), the Second Further Notice abandons this proposal in favor of a local ownership standard combining both DMA and Grade A contour criteria.

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[2] While comments on the Radio-Television Cross-Ownership Rule, the grandfathering of Television Local Marketing Agreements and proposed waivers and exceptions to the Duopoly rule were also sought, this comment is limited to addressing the proposed use of a DMA/Grade A contour standard in applying the duopoly rule.

Under the Commission's new proposal, common ownership of television stations would be allowed provided the Grade A contours of the stations did not overlap and the stations were not located in the same DMA. Second Further Notice at ¶13. Thus, unlike the earlier proposal, no common ownership would be allowed within a single DMA, with the exception that to avoid disrupting existing ownership structures, the Commission also proposes to grandfather existing arrangements permissible under the current Grade B contour rule. Second Further Notice at ¶28.

DISCUSSION

I. DMA's are Subject to Arbitrary Manipulation by a Lack of Oversight in Their Formation and Modification.

The criteria used in the creation and modification of DMA's are subject to change, and thus possible abuse, at the complete discretion and whim of the company creating and reaping the economic benefit of the standard. No regulatory oversight exists to ensure that Nielsen's DMA designation truly corresponds to the "local market." Rather, Nielsen's economic realities alone dictate the criteria it uses to define DMA's, providing an incentive to minimize the number of markets which must be studied and, thereby related costs.

DMA's are also subject to change over time. According to the November 1996 Nielsen Station Index for Las Vegas Nevada, "[c]ounty assignments are reviewed and updated annually each spring based on information accumulated to date." Under the proposed rule, commonly owned stations which are permissible when originally acquired might, upon a shift in DMA boundaries, become suddenly impermissible through no action of the broadcaster. Inevitably, exceptions would be requested and any hope of clarity and consistency in applying the

DMA/Grade A contour would be lost.

The use of a Grade A contour, in contrast, is the simple, straightforward application of the measurable strength of a signal, and therefore cannot be manipulated according to the profit motive of an enterprise not subject to oversight by the Commission. Use of the Grade A contour standard alone in applying the duopoly rule would result in the rule's uniform application and would eliminate the need for exceptions as the boundaries of DMA's change over time. This would save both applicants and the Commission time and expense in processing construction permit, assignment and transfer of control applications.

II. Grandfathering of Existing Commonly Owned Stations Will Create a Disincentive to New Voices and Reduce Opportunities for Minorities and Women.

In the event a DMA/Grade A rule is adopted, and existing commonly owned stations are allowed to remain under a grandfather provision, the ability of new voices to enter the market would be diminished. Because existing broadcast combinations would retain the significant efficiency advantages of common ownership, new voices would be less likely to risk entrance into the market. In many cases, the efficiencies enjoyed by existing common ownership would be entirely denied to new entrants. In fact, the Second Further Notice states that, if grandfathering is allowed, "the apparently more restrictive aspects of a DMA/Grade A duopoly approach would appear to have little effect on *existing* broadcasters." Second Further Notice at ¶28 (emphasis added). Thus, grandfathering these combinations would maintain the status quo for current participants in the broadcast market to the exclusion of new participants in the broadcast field. Since opportunities for significant participation by women and minorities in station ownership and control are more likely to be found in new broadcast ventures, adoption of the DMA/Grade A approach with grandfathering of existing commonly owned stations would certainly discourage women and minority participation in the broadcast market.

In contrast, use of a Grade A approach would protect existing combinations while at the same time allowing new entrants in the market place to take advantage of the significant economies of common station ownership. With a Grade A approach, already existing arrangements would not need to be grandfathered since the Grade A contour standard would in all cases be more permissive than the current Grade B standard. This would also eliminate the need to consider whether any such grandfathering should terminate upon the subsequent transfer of a station, an issue which otherwise must be resolved and upon which the Commission requested comment. Second Further Notice at ¶28.

III. The Lack of Uniformity and Consistency in DMA Definitions Makes Their Use In Applying the Duopoly Rule Undesireable.

The use of the DMA as a measure for the application of the duopoly rule is undesirable because DMA's vary widely in geographic size and population. For example, the State of Montana which has an area of 145,388 square miles and had a 1990 population of 799,065, contains six DMAs, the Helena, Billings, Glendive, Butte-Bozeman, Missoula and Great Falls DMA's. In fact, the Glendive DMA consists of only 5,170 television households, according to the 1996 Broadcasting & Cable Yearbook ("B&CY"). In contrast, the state of Utah, which has an area of 82,076 square miles and a 1990 population of 1,722,850, over twice that of Montana, and contains several communities similar in size to each of the separate Montana DMA's, is placed entirely in a single DMA, the Salt Lake City DMA. Moreover, according to the B&CY, the Salt Lake City, Utah DMA includes portions of surrounding states, consisting in total of 656,060 television households. This extreme variation in the populations and sizes of DMA's would result in arbitrary application of the duopoly rule. A single broadcaster could acquire six stations in sparsely populated Montana but only one in more populous Utah. Moreover, Utah is not the only large DMA established by Nielsen. Other examples include the Minot-Bismarck-Dickinson, North Dakota, the Phoenix, Arizona and the Albuquerque-Santa Fe, New Mexico DMAs.

A further problem in large DMA's lies in the existence of long distances between cities which inevitably have very different viewer interests and advertising markets. In the State of Utah the distance between Salt Lake City and St. George, both in the Salt Lake City DMA is about 300 miles. Yet, if the Commission's proposed rule is adopted, those cities would be considered one market for the purpose of applying the duopoly rule, with supposedly uniform local viewer concerns and advertising settings. However distant cities have vastly different community interests and advertising markets which should be taken into account for purposes of the Duopoly rule. The Salt Lake City / St. George relationship is not an isolated example of distant cities in the same DMA. Another example is Albuquerque and Carlsbad, New Mexico which are 275 miles apart and yet are both located in the Albuquerque-Santa Fe DMA.

It is notable that the major networks even recognize that different markets frequently exist within the same DMA, for they often affiliate with more than one station in the same DMA. For instance, the Salt Lake City, Utah DMA has two CBS affiliates, one in Salt Lake City, and the other in Rock Springs, Wyoming. The Albuquerque-Santa Fe DMA includes two NBC affiliates and a satellite of a Texas NBC affiliate, two ABC affiliates and two CBS affiliates. In fact, according to the B&CY, there are over 20 DMA's that have more than one affiliate of at least one of the major networks.

IV. Use of DMA's Would be Anticompetitive.

The Commission's proposed DMA/Grade A duopoly rule flies in the face of the procompetitive mandate of the Congress in the Telecommunications Act of 1996. Defining a television station's market by its DMA for purposes of the duopoly rule will be anticompetitive and will serve to reinforce the dominant market position of established network affiliated stations. Such a definition will make it considerably more difficult for new networks to become established because their affiliates will not be able to compete with the affiliates of the established networks.

In defining a television station's market in the past the Commission has always focused its attention on the service area reached by the station's over-the-air transmitting antenna. That is the basis for the calculation of a station's Grade A and Grade B contours. See Sec. 73.683 of the Commission's Rules, 47 CFR Sec. 73.683. The Commission has long permitted stations to extend their signals beyond their contours by translators, but the use of translators has never before been considered to expand a station's service area. Likewise, there is no restriction on the carriage of a TV station on distant cable systems, but such carriage has never before been considered to expand a station's service area. Translators and cable do, of course, permit viewers beyond the station's contours to view the station.

Nielsen bases its DMA designations not on service from a station's transmitting antenna but on viewership, which may include viewers who receive the station's signal far beyond its Grade B contour by means of translators and cable systems. Defining a TV station's so called "local" market solely by viewership as the DMA does results in greatly expanded "local" markets in many parts of the country. As indicated previously, some of the DMA's in the western part of the country include virtually an entire state, such as Utah and New Mexico. While both cable and translators contribute to this wide area viewership, this comment will not address the question of cable because many cable systems are in the core area of a station's service area and duplicate rather than expand the station's over-the-air coverage. Translators, on the other hand, by their nature seldom duplicate over-the-air coverage but are used to fill in nulls within contours and to extend coverage beyond a stations' Grade B contour.

One of the main reasons why some DMA's greatly exceed the Grade B contours of the stations in their markets is that a few stations, primarily network affiliates, in those markets have assembled networks of translators which cover large geographical areas, sometimes entire states. For example, according to the B&CY, the television stations in the Albuquerque/Santa Fe market have the following number of translators:

Station	Network	Translators
KASY-TV	None	None listed
KAZQ	None	None listed
KLUZ-TV	Univision	None listed
KNAT	None	None listed
KNME-TV	PBS	30
KOAT-TV	ABC	84
KOB-TV	NBC	80
KRQE	CBS	61 (Plus KBIM-TV, Roswell, NM)
KASA-TV	FOX	17
KCHF	None	None listed

(B&CY, p. C-49 & 50)

and in the Salt Lake City market the numbers are as follows:

Station	Network	Translators
KBYU	PBS	31
KJZZ-TV	None	32
KSL-TV	CBS	121
KSTU	FOX	53
KTVX	ABC	115
KUED	PBS	56
KUTV	NBC	125

(B&CY, p. C-76)

With the coming of DTV, which will require the use of a great many channels previously available for use as translators, it is apparent that no newcomer to either of these markets will ever be able to assemble anywhere near the number of translators the incumbent network affiliates already possess. What that means is that no newcomer will be able to compete in the entire DMA - unless he can acquire more than one station in the DMA.

Indeed, it is ironic that at the very time when the existence of many translators is threatened by the need for DTV channels [3], the Commission now proposes for the first time to effectively recognize service by translators under the television duopoly rule by expanding the service area of a station beyond its Grade B contour to include its entire DMA. If some of the existing translators must go dark to make DTV a reality, will this not likely have an effect on the definitions of the DMA's involved, and thus lead to uncertainty rather than certainty in the application of the new duopoly rule, if it is based on DMA's?

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[3] See the Comments of the National Translator Association to the Sixth Further Notice of Proposed Rulemaking in In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, MM Docket No. 87-268, in which the translators at a single site in Utah are used as an example to show the problems created by the Commission's DTV allocation plan.

Moreover, as the chart of translators above indicates, not all stations in a market are able to serve the entire DMA. Only a few stations, primarily the long established ABC, CBS and NBC affiliates, are fully competitive in the entire DMA. In this regard it is interesting to note that for the CBS affiliate in the Albuquerque/Santa Fe market, KRQE, the ownership of one other station in the DMA, KBIM-TV in Roswell, appears to take the place of about 20 translators operated by the ABC and NBC affiliates. The chart also suggests that while the FOX network has made great strides, it is not yet fully competitive with the three earlier established networks.

Realistically, there is only one way for an affiliate of a new network to compete with the dominant stations in a large DMA today - by acquiring more than one station in the DMA. In some instances this would be possible under the present Grade B Duopoly rule, as the ownership of a station in Roswell, New Mexico by the CBS affiliate in Albuquerque illustrates. It could be done more easily and in many more markets under a Grade A duopoly rule, as the Commission previously proposed, but it will not be possible at all under a DMA/Grade A duopoly rule.

From the point of view of competition in the television industry, the DMA/Grade A duopoly rule presently proposed by the Commission will have the effect of further entrenching the dominant networks and their affiliates, and will serve to prevent new networks and their affiliates from becoming established and competing fully in the television marketplace. The proposed duopoly rule is anticompetitive and should be abandoned by the Commission in favor of the Grade A rule previously proposed.

V. DMA's Fail to Accurately Define Local Markets.

The "local" ownership rule should be concerned with a television station's true geographic market. And, although translators and cable may enable a station to reach a broader area of viewers than a station's over-the- air transmission alone, a station's true local market consists of local advertisers and local viewers. Local advertisers who would actually use the station for advertising purposes are key figures in promoting competition in the advertising market. For example, although it would be possible for a local advertiser in Cedar City, Utah which is 247 miles from Salt Lake City, to purchase advertising time on a Salt Lake City station, it would be an inefficient and expensive way to reach viewers in the Cedar City area. As a result, this advertiser will invariably select media in the local community rather than media originating almost 300 miles away and whose cost is likely prohibitive because of its reach to a much wider audience than the advertiser desires.

Similarly, although viewers would find the geographically distant station's network and other national programming relevant and of interest, local programming, news in particular, aimed at meeting the needs and specific interests of viewers in the immediate area is what provides the real opportunity for diversity. Programming provided by networks and syndication offer much less of an opportunity for diversity of viewpoint.

Congress itself recognizes that a significant aspect in determining a station's market is an examination of the local coverage that it provides. In granting the Commission discretion to vary from commercial market measurement standards for the purposes of implementing the cable "must carry" provisions found at Section 614 of the Communications Act of 1934, as amended, the Commission is instructed to "afford particular attention to the value of localism by taking into account such factors as...whether the television station provides coverage or other local service to such community." Communications Act of 1934, as amended, §614(h)(1)(C)(ii), 47 U.S.C. §534(h)(1)(C)(ii).

In providing guidance with respect to this local coverage factor, the Commission has noted that "to show...the station provides coverage or other local service to the cable community...parties may demonstrate that the station places at least a Grade B coverage contour over the cable community or is located *close to the community in terms of mileage*. Coverage of news or other programming of interest to the community could be demonstrated by program logs or other descriptions of *local program offerings*." Report and Order in MM Docket 92-259, 8 FCC Rcd 2965, 2977 (1993) (emphasis added).

Thus, both Congress and the Commission recognize the importance of programming focused on local issues as well as the geographic proximity of the station to a community in determining a station's local market. The use of a Grade A contour standard alone in the duopoly rule would be in accord with this basic approach because it places the focus on the location of each station and the individual communities whose interests it serves.

Likewise, the benefit to viewers of competitive advertising comes primarily from those local advertisers whose products or services are readily available in the community. An advertisement from a local insurance agency in Carlsbad, New Mexico, although placed in the Albuquerque-Santa Fe DMA, will be of most importance and benefit to the viewers in Carlsbad and will be of little use to viewers in Albuquerque or Santa Fe which are both more than 250 miles away. Accordingly, even with common ownership of multiple stations in the same DMA, licensees would be compelled to respond to local advertisers and viewers in order to maximize viewership and advertising revenues. The national or regional character of network advertising and programming make them unaffected by ownership of individual stations. As a result, common ownership within different communities of the same DMA would not curtail competition, but foster it. By its very nature, economic competition exists among local television stations as well as other media that compete for advertisers. Use of the Grade A standard insures that no one entity may control multiple voices within the relevant local market.

In addition, although cable does expand the reach of television broadcast stations, it is important to note that not all television viewers receive cable broadcasts. The Second Further Notice at paragraph twenty three noted that just over one-third of television viewers do not subscribe to cable television. In fact, the large DMA's mentioned above actually fall below this level. The Salt Lake City DMA has a cable penetration rate of only 53.6%; the Phoenix DMA has a cable penetration rate of 56.6%; the Albuquerque-Santa Fe DMA has a cable penetration rate of 58.9%; and the Minot-Bismarck-Dickinson DMA has a cable penetration rate of 61.7% according to the B&CY at pages D-70 through D-73. Furthermore, the fact that a household subscribes to a cable service does not necessarily mean that every television in the household is served by cable. Because of the cost of the purchase or rental of cable boxes, some households rely on over-the-air reception for additional television sets in the home.

Apart from the geographic differences, markets within a given DMA have varied demographics to which advertisers and local programming must respond. For instance, within the Salt Lake City DMA, Salt Lake County has a demographic makeup quite different from Iron County and Washington County, Utah. And even Iron County and Washington County show some significant differences. In Salt Lake County, the median household EBI[4] is $34,177. The Iron County median EBI is $24,584, which amounts to only 72 % of Salt Lake County's, and the Washington County median EBI of $26,389 is only 77% of Salt Lake County's. Further, 27.2% of the households in Salt Lake County have EBI's of $50,000 or more while only 15.0% of Iron County and 15.5% of Washington County households fall into this same category. And, finally, 18.7% of the population of Salt Lake County is age 50 or older. For Iron County, this number increases to 20.5% and for Washington County it jumps to 27.8%. Sales & Marketing Management, 1996 Survey of Buying Power.

This statistical evidence clearly shows that geographic regions within DMA's can reflect substantially different demographics. Local broadcasters must respond to these demographics in order to be competitive. And it is these demographics that local businesses face when developing advertising plans and making decisions concerning which media to utilize. Thus, while DMA's may give some basic approximation of a broadcast station's reach, the actual market for local advertising dollars and for local programming is much narrower.

As indicated by the above evidence, the definition of a local market is most accurately established by an examination of the location of each broadcast station and the relevant audience and advertisers in the immediate surroundings of that station. While recognizing that such a case-by-case approach may be impractical and inefficient given the 1,544 stations on air as of January 1, 1996 according to the B&CY at page C-244, the use of the DMA criteria is too broad a market generalization and thus in many instances sacrifices the ability to accurately achieve true local

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[4]Effective Buying Income ("EBI") is a measurement of income developed by Sales & Marketing Management and used in its publication entitled 1996 Survey of Buying Power.

market diversity merely for the purposes of expediency.

Use of the Grade A contour only is a far more appropriate way of defining a local market for purposes of the duopoly rule. Because a Grade A contour has a radius of approximately 30-45 miles, Second Further Notice at ¶10, it is a much more reasonable measurement of local businesses most likely to use advertising air time available for local commercials. Likewise, programming of a uniquely local nature will most appeal to those viewers within this range. While any fixed rule will necessarily sacrifice some accuracy in defining a television station's local market, use of the Grade A contour is certainly more appropriate and reliable than a DMA approach that would label Phoenix and Flagstaff, Arizona, which are 137 miles apart as the same local market.

CONCLUSION

DMA's should not play any part in the application of the Commission's Duopoly rule. There is no governmental oversight of the manner in which DMA's are established and modified. DMA's are subject to arbitrary manipulation. Their wide size variations and shifting boundaries are counterproductive to the goal of consistent, uniform application of the duopoly rule. While grandfathering current combinations has the virtue of maintaining the status quo for established broadcasters, new entrants would be denied the same advantages, creating a competitive barrier to women, minorities and new networks attempting to enter the marketplace. Further, anticompetive results would occur if the DMA criteria is adopted because of the existence of dominant stations, with their wide networks of translators, which would require new entrants to own more than one station in the DMA to effectively compete.

The fact that the DMA definition of a market fails to accurately define local markets in geographically large DMA's is another strong argument against its use. The DMA approach is too generalized with regard to the needs of viewers and advertisers in local communities served by television broadcast stations. Ease of application and the ready availability of a reference cannot serve as a substitute for careful consideration of other important factors in determining the proper criteria to utilize in applying the duopoly rule. The Grade A contour approach, with its close tie to the local community whose viewers needs must be accommodated and whose advertisers are the realistic market for local commercial time, best defines the local market. Accordingly, the Grade A contour alone is the appropriate standard upon which to base the duopoly rule.

Respectfully submitted:

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